

BEFORE THE APPEALS BOARD

**FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BETH WILK)	
Claimant)	
VS.)	
)	Docket No. 190,312
TOOMEY, RUSSELL, GREGORY & PILGREN)	
Respondent)	
AND)	
)	
FARM BUREAU MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on December 20, 1996.

ISSUES

Claimant contends that the Administrative Law Judge erred when she refused to award additional medical treatment. The issue arises in an unusual context. The Administrative Law Judge entered an Award in this case on December 22, 1995. In that Award the Administrative Law Judge ruled the injury the claimant suffered in the course of her employment was a temporary injury only. The Administrative Law Judge noted that claimant had a preexisting back condition and preexisting permanent impairment. She found that the injury at work caused a temporary aggravation with no additional permanent impairment.

Claimant appealed the initial Award and in an Order entered June 21, 1996, the Appeals Board affirmed the decision by the Administrative Law Judge, also finding that the injury was temporary only. While the appeal was pending, claimant filed an Application for Modification and Review and an Application for Preliminary Hearing. The Administrative Law Judge first declined to hear these applications until after the decision by the Appeals Board on the initial appeal. The Administrative Law Judge did, however, take additional

testimony from the claimant and received additional medical reports at a hearing on April 24, 1996. On December 20, 1996, the Administrative Law Judge entered the Order which is the subject of this appeal. She denied claimant's request for additional medical treatment. The Order concludes that claimant was previously found to have a temporary aggravation of a preexisting permanent condition, and respondent has no liability for ongoing medical treatment for a temporary condition.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes, for the two reasons stated below, the decision by the Administrative Law Judge should be affirmed.

First, the issue raised by claimant's application is, in effect, whether the original finding by the Administrative Law Judge and Appeals Board was correct. The original finding that the injury was temporary carried with it the conclusion that no further medical treatment was necessary for the original work-related injury. The principles of *res judicata* apply. Garrison v. Beech Aircraft Corp., 23 Kan. App. 2d 221, 929 P.2d 788 (1996). Review and modification is not available to reexamine a finding of past fact. Randall v. Pepsi-Cola Bottling Co., Inc., 212 Kan. 392, 510 P.2d 1190 (1973).

Second, the evidence presented did not establish a basis for review and modification. In the original claim the evidence established that claimant had a preexisting degenerative condition. That preexisting condition was rated by Dr. Thomas Kneidel as a 4 percent permanent partial general disability. The Appeals Board also found, however, that the work-related injury resulted in a temporary aggravation only and not an additional permanent impairment. The evidence presented at the preliminary hearing in this review and modification proceeding does not convince the Appeals Board otherwise.

The evidence presented includes the testimony of claimant as well as the report from Dr. Kneidel. Claimant testifies that she continues to have difficulties and continues to take medication. Claimant testified that in January 1996 Dr. Kneidel recommended an MRI. According to claimant, the MRI shows degeneration not only in C5-6 but also at C6-7 and, according to claimant, suggested the need for surgery. The new report from Dr. Kneidel states that claimant has "chronic impairment of function in her neck." It also indicates that the MRI shows degenerative changes at C5-6 level. Even if the report from Dr. Kneidel is viewed as an indication that claimant's condition is in some sense worse, it does not suggest that this worsened condition was caused by claimant's work. For that additional reason, the Appeals Board concludes that the Order denying additional medical treatment should be affirmed.

WHEREFORE, the Appeals Board finds that Order by Administrative Law Judge Nelsonna Potts Barnes dated December 20, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Kim R. Martens, Wichita, KS
Randall C. Henry, Hutchinson, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director